

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
LIXIONG CHEN,
Defendant.

Case No.18-cr-00450-JD-1

PRETRIAL ORDER NO. 1

A jury trial is set for April 10, 2019, at 9:00 a.m. The second pretrial conference is set for April 9, 2019, at 10:00 a.m.

I. TRIAL SCHEDULE

1. Trial will be held from 9:00 a.m. to 2:00 p.m. each trial day, with two 15-minute breaks. Fridays will generally be reserved for other matters.

II. MINI-OPENINGS, VOIR DIRE & JURY SELECTION

1. The parties will file proposed “mini-opening” statements for the jury pool by April 9, 2019, at 9:00 a.m. The statements should be short (no more than 3 minutes) and not argumentative.
2. The Court will seat fourteen jurors using its strike and replace method. A prospective juror not excused after a round of challenges will be deemed a member of the jury and may not subsequently be challenged. The Court will conduct the voir dire based on its own questions and the questions proposed by the parties. The Court will post the proposed voir dire questions, and the parties may raise any objections or concerns at the conference on April 9, 2019.
3. The parties must be prepared to give their opening statements and begin presenting witnesses on April 10, 2019.

1 **III. OTHER TRIAL PROCEDURES**

- 2 1. **Sidebars.** There will be no sidebars during trial. The parties should not ask for one.
- 3 2. **Objections.** Counsel must stand to state any objections and state only the rule that is
- 4 the basis of the objection. No argument or commentary should be made unless
- 5 requested by the Court.
- 6 3. **Witnesses readiness.** Each party must have its witnesses for the trial day available in
- 7 the courthouse and ready to testify. Failure to have the next witness ready or to be
- 8 prepared to proceed with the evidence will usually constitute resting.
- 9 4. **Disclosure of witnesses.** A party must disclose the identity of the witnesses it plans to
- 10 call by 5 p.m. the court day before calling the witness to the stand. Any party that has
- 11 an objection must alert the Court no later than 6 a.m. on the court day the witness is to
- 12 be called, and the Court will take up the objection outside the presence of the jury.
- 13 5. **Exchange of opening demonstratives.** The parties will meet and confer to agree on a
- 14 schedule to exchange any demonstratives for opening statements.
- 15 6. **Tech set-up.** The parties should contact Courtroom Deputy Lisa Clark to schedule an
- 16 equipment check for courtroom technology.

17 **IV. MOTIONS IN LIMINE**

- 18 1. **Government’s MIL No. 1 re Evidence of Other Bad Acts Under 404(b):** The
- 19 evidence proffered by the government is **EXCLUDED**. The prior CBP materials are
- 20 of questionable relevance and would likely require too much time to explain and cause
- 21 undue prejudice and confusion for the jury. FRE 402/403.
- 22 2. **Government’s MIL No. 2 re Defendant’s Out-of-Court Statements: GRANTED.**
- 23 The government may introduce defendant’s prior statements as party admissions; the
- 24 defendant may not do the same.
- 25 3. **Government’s MIL No. 3 re Opening Statements: GRANTED.** Opening
- 26 statements should not mention selective prosecution, jury nullification, or personal
- 27 opinions about the defendant’s innocence or guilt.
- 28

- 1 4. **Government's MIL No. 4 re References to Sentencing or Punishment:**
2 **GRANTED.** Neither side may refer to possible sentencing or punishments.
- 3 5. **Government's MIL No. 5 re Co-Conspirator Statements: DEFERRED** pending
4 trial.
- 5 6. **Government's MIL No. 6 re Statements of Defendant's Agents: DEFERRED**
6 pending trial.
- 7 7. **Government's MIL No. 7 re Defendant's Undisclosed Evidence: DEFERRED**
8 pending defendant's motions to exclude evidence and to dismiss the indictment.
- 9 8. **Defendant's MIL No. 1 re Exclusion of Henry Chen's Statements: GRANTED** in
10 principle.
- 11 9. **Defendant's MIL No. 2 re Law Enforcement Reports: GRANTED.** The reports
12 are excluded.

13 **V. OTHER MOTIONS**

- 14 1. **Defendant's Motion to Suppress: DENIED AS MOOT.** The government agrees not
15 to use defendant's interrogation statements in its case in chief. Dkt. No. 54. If
16 defendant opts to take the stand, he will so inform the Court at least one day before so
17 that it may rule on the voluntariness of his statements.
- 18 2. **Defendant's Motion for Bifurcated Jury Proceeding re Forfeiture: DENIED AS**
19 **MOOT.** The government does not plan to seek any further nonmonetary forfeiture.
20 Dkt. No. 81.
- 21 3. **Defendant's Motion to Exclude Evidence: TAKEN UNDER SUBMISSION.**
- 22 4. **Defendant's Motion to Dismiss the Indictment: TAKEN UNDER SUBMISSION.**

23 **VI. JURY INSTRUCTIONS AND VERDICT FORM**


- 24 1. **Jury Instructions.** The Court will post proposed jury instructions based on the
25 parties' submissions and give the parties an opportunity to raise questions or concerns
26 at the April 9, 2019, pretrial conference or earlier.

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2. **Verdict form.** The Court will post the proposed verdict form and give the parties an opportunity to raise questions or concerns at the April 9, 2019, pretrial conference.

IT IS SO ORDERED.

Dated: March 29, 2019



JAMES DONATO
United States District Judge